Circuit Court for Prince George's County
Case No. CAL14-15340

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1663

September Term, 2016

KAREN HILLIAN-CARR

v.

DONNA HILLIAN-ZIGLAR, *et al.*

Wright,
Leahy,
Shaw Geter,

JJ.

Opinion by Leahy, J.

Filed: July 11, 2018

Jeremiah Hillian passed away intestate on March 11, 2014. He had ten children—six from his second marriage: Karen Hillian-Carr, Sheree McCauley, Sharon Hillian-Walker, Charlene Swann, Anthony Hillian, and Albert Hillian, who were the defendants below; and four prior to that marriage: Donna Hillian-Ziglar, Nedra Satterfield, Michael Glenn, and Belverly Hillian ("Individual Plaintiffs").[1]

One of these children, Karen, is the sole appellant here and was Jeremiah's attorney-in-fact. In May 2013, Jeremiah's signature was signed on two bank signature cards that purported to add Karen as an authorized signer on two of Jeremiah's bank accounts. The day following Jeremiah's death, Karen withdrew all of the funds in the account ending in 0861 in the amount of $131,896.93.

The underlying complaint, brought by the Individual Plaintiffs and Jeremiah's Estate in the Circuit Court for Prince George's County, alleged numerous causes of action against Jeremiah's six children from his second marriage, his granddaughter Arniece Hillian, and SunTrust Bank. Relevant to the instant appeal, the complaint alleged an accounting violation and counts of fraud and deceit, including that the signatures on the bank cards were forged. Following a two-day bench trial, the court concluded, among other things, that the signatures of Jeremiah were forged, that Karen engaged in fraud and deceit, and that Jeremiah's Estate was the sole owner of the funds wrongfully withdrawn

[1] We shall use first names to distinguish between members of the Hillian family, given that several individuals involved in this proceeding use that last name or some variation thereof.

from Jeremiah's bank account ending in 0861. Karen noted her timely appeal to this Court on October 7, 2016. She presents a single question for our review: "Is a person's name, when signed by another at his request and in his presence, his valid and authorized signature on a bank card?"

Discerning no error in the trial court's factual findings, we hold that the trial court had sufficient evidence on which to base its decision that the signatures on the bank cards were forged and, *a fortiori*, were unauthorized.

BACKGROUND

A. Power of Attorney and the Bank Accounts

Jeremiah entrusted Karen as his attorney-in-fact through a power of attorney that he executed on June 8, 2010. The power of attorney afforded Karen significant authority, duties, and responsibilities. The following sections are significant in this appeal:

> **6. Deposit and Demand Accounts.** To deposit in and draw on any checking, savings, money market deposit or other accounts which I may have in any banks, savings and loan associations, mutual fund, and any accounts with security brokers or other commercial institutions, and to establish and terminate all such accounts; and to receive and endorse checks and drafts.
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> **9. Business Operations and Transactions.** To operate, manage, enter into all types of contracts, buy, sell, enlarge, reduce, and terminate any business interest.
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> * * *
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> **13. Trusts.** To execute and deliver revocable or irrevocable trust agreements, and amendments thereto, for the benefit of myself, and my children; to make additions to any existing or future living trusts of which I am the grantor or a grantor; and to amend or terminate such trusts, all so long as such acts do not substantially alter distribution of my estate during my lifetime or on my death and so long as such

> acts are in the best interest of the trust(s), ... My Agent is authorized to establish and fund any trust, revocable or irrevocable, with all or any part of my assets, which contains dispositive provisions consistent with those set forth in my will (or my revocable living trust).
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> **14. Power to Make Gifts.** To make gifts on my behalf to a class composed of my children, any of their issue, or both (even if serving as my Attorney in Fact under this Power of Attorney), ... If a gift is made to any of my children, my Agent shall make a substantially similar concurrent gift to each of my other children.
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> * * *
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> **19. Reliance on Agent's Authority.** My Agent's signature under the authority granted in this power o[f] attorney may be accepted by any third party or organization with the same force and effect as if I were personally present and acting on my own behalf. No person or organization who relies on my Agent's authority under this instrument shall incur any liability to me, my estate, heirs, successors or assigns, because of reliance on this instrument.
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> * * *
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> **22. Ratification by Principal.** I hereby ratify and confirm all that my Agent shall do, or cause to be done, by virtue of this power of attorney.

Over the course of his lifetime, Jeremiah acquired considerable assets, including two pieces of real property; 100% of the stock in a company known as Hillian Bros & Sons, Inc.; and two SunTrust bank accounts, one ending in 8403 ("8403 Account") and the other in 0861 ("0861 Account"). Regarding the bank accounts, Jeremiah opened the 8403 Account on April 11, 1997. The personal account signature card, signed June 23, 2004, listed Sheree (Karen's sister) as the 8403 Account's "payable on death" recipient. Jeremiah opened the 0861 Account over eight years later, on October 19, 2012. At that time, neither the 8403 Account nor the 0861 Account listed any authorized signer other than Jeremiah.

On March 22, 2013, Arniece Hillian was added as an authorized signer on the 8403

Account and the 0861 Account. On both form documents, "With Survivorship" was selected. As defined by SunTrust, "'With Survivorship' means that if one owner dies, the surviving owner(s) become the sole owner of the account." Carolyn Mathis, a SunTrust employee, prepared the documents and listed the reasons for the additions as "Client Request". The following month, April 2013, the 8403 Account was revised to change the account title from "Jeremiah Hillian POD to Sheree McCauley" to "Jeremiah Hillian or Arniece C Hillian or Sheree McCauley". Ms. Mathis again performed the revision, citing the reason as "Client Request". The pattern continued, as the next month, on May 17, 2013, Ms. Mathis—based again on a "Client Request"—added Karen as an authorized signer to the 8403 Account. The 8403 Account's title did not change. The same day, Ms. Mathis, acting upon "Client Request", also added Karen as an authorized signer to the 0861 Account; however, "With Survivorship" was not selected. The title on the 0861 Account, therefore, read "Jeremiah Hillian or Karen Ann Hillian-Carr or Arniece C Hillian."

Ms. Mathis later testified at trial as to her relationship with Jeremiah and her memory of those account changes. Since 2011, she had been Jeremiah's primary contact person and stated, "Usually he would call me in advance to let me know that he was going to do something. And he would say he would be by today. And then he would show up and then we would discuss it." She identified Sheree, Karen, and Arniece as those who most frequently came to the bank with Jeremiah.

Her testimony then focused on the alterations to the 8403 Account and 0861 Account. Defense counsel questioned her about her memory of the events:

[MR. REID]: Tell the Court what happened on March 2[2], 2013?

[MS. MATHIS]: Jeremiah and Arniece came into the bank so that Arniece could be added as a signer on the account.

[MR. REID]: And what happened next, once they came into the building?

[MS. MATHIS]: I ID'd them. And they signed the signature card.

[MR. REID]: And when you say they signed the signature card, who specifically signed the signature card?

[MS. MATHIS]: Arniece and Jeremiah were there to sign the signature card.

[MR. REID]: And did he authorize –

[MR. BINSTOCK]: Objection that is non-responsive to the question.

[THE COURT]: I heard the answer.

Ms. Mathis also testified about what happened on May 17, 2013:

[MS. MATHIS]: Arniece and Karen and Mr. Hillian came in to change signers on the account – to add signers on the account.

[MR. REID]: Did you know that they were going to be coming in that day?

[MS. MATHIS]: Yes.

[MR. REID]: And how did you know that?

[MS. MATHIS]: Mr. Hillian called me.

* * *

[MR. REID]: And thereafter, did the parties sign the document that would effectuate the change in the account?

[MS. MATHIS]: All parties were there when the document was signed.

* * *

[THE COURT]: Again I heard her answer. That is an affirmative no, I understand what it is.

* * *

[MR. REID]: With regard to that signature, is that Mr. Jeremiah Hillian's signature?

[MS. MATHIS]: It appears to be.

[MR. REID]: But he didn't actually sign that did he?

[MR. BRYANT]: Objection.

[THE COURT]: What is the objection? He is impeaching his own witness, why are you –

[MR. BRYANT]: I will withdraw the objection, Your Honor.

[THE COURT]: I figured so.

[MR. REID]: Is that Mr. Hillian's signature on t[he] left?

[MS. MATHIS]: It was signed for him.

* * *

[THE COURT]: She has now given us two answers as to what she has observed.

* * *

[THE COURT]: Let's try this one more time. Who signed that document explicitly? Don't look at the document. . . . I want to know from your own personal knowledge, who signed that document?

[MR. REID]: May I lead with one question, Your Honor?

[THE COURT]: No, we will wait and see if we can get an answer. Because I have got it answered twice with two different answers. So I have given three strikes and you are out. You know that.

[MR. REID]: I understand, Your Honor. Yes, Your Honor.

[MS. MATHIS]: His niece.

Ms. Mathis inserted that Jeremiah never called her about any unauthorized activity in the 0861 Account and that no one else from the family had otherwise inquired about his accounts.

On cross-examination, Ms. Mathis explained that, on average, she saw 20 individuals per day over the course of her employment at SunTrust, which lasted from October 2010 to January 2015. Despite this, she claimed that she remembered the specific events regarding the changes to the 8403 Account and 0861 Account. Ms. Mathis admitted that, generally, an individual who signed another's signature through power of attorney would often write next to the signature that an attorney-in-fact signed for a principal.

B. Karen's Creation of the Revocable Trust Agreement and Jeremiah's Death

On November 5, 2013, just months after the changes to the 8403 Account and 0861 Account, Jeremiah suffered a stroke that resulted in his hospitalization. After his stroke, Karen consulted the Law Offices of Gabriel J. Christian and Associates in an effort to procure testamentary documents for Jeremiah. Initially, Karen tried to create a will for Jeremiah and a trust for Jeremiah's business to protect the business from probate and not disrupt its daily affairs. Christopher Martin, an attorney then-employed at the firm, went to visit Jeremiah, who was back in his house in Bowie, Maryland, in January 2014 to determine whether he "was capable of creating a will at that point in time."

Mr. Martin would later testify that at that meeting in January 2014, Jeremiah was in a medical bed and that Karen and one of Jeremiah's sons attended. He further stated,

"During the discussion it became clear to me that I didn't feel comfortable saying 100 percent that we could rely on his words and that was only because I couldn't understand him clearly at that point in time." Mr. Martin did not discuss Jeremiah's assets with him because Mr. Martin "did not feel – I thought that I had to rely – at least at that time, too heavily upon the interpretation of his children to confidently do that." Jeremiah never told Mr. Martin about any plans for the disposition of his assets after his death.

Given that the power of attorney granted Karen the authority to establish a trust, Mr. Martin then drafted a trust agreement. Because of the power of attorney, Mr. Martin believed that Karen could execute both the assignment and transfer of interest in the company and the revocable trust agreement as he explained to counsel for the Individual Plaintiffs:

> [MR. BINSTOCK]: Okay and if I understood your testimony earlier you said that it was your understanding that the kids knew of the content of the [] documents that you in fact did draft the revocable trust and the assignment?
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> [MR. MARTIN]: Yes, it was our understanding that the family was aware of these wishes and that they were being drafted on (Inaudible) to maintain what was already in place with the business.

At some point "before March 10[, 2014,]" Mr. Martin sent the draft trust agreement to Karen and encouraged that the family review its proposed terms.

On March 9, 2014, Jeremiah went into cardiac arrest, which led to his placement on life support. Karen then contacted Mr. Martin, explaining that the execution of the trust agreement was an exigency because Jeremiah's health had taken a sharp turn downhill.

The following day, March 10, 2014, Karen executed the revocable trust agreement,

signing the agreement as a trustee and signing "For Jeremiah Hillian" on one line and signing her name directly below it. In her deposition, Karen admitted that she never talked to Jeremiah at any time about the trust agreement prior to signing it. Jeremiah was unconscious, on life support, and not present when she signed the documents.

The revocable trust agreement listed all ten of Jeremiah's children in its definition of "child" or "children". In Section 4.02, Karen, as the Trustee, was empowered to administer the trust upon Jeremiah's death. Section 4.06 left the proceeds from the sale of Jeremiah's residence to six children, the initial defendants below, and Section 4.07 (the second section listed as such, which appears to be an error) stated, in part, "the Trustee shall distribute all personal and household effects, furniture, household furnishings, . . . to such of [Jeremiah's] children who survive [him], in approximately equal shares, subject to the Trustee's sole and exclusive discretion." The trust agreement also awarded Jeremiah's Lincoln Navigator to Arniece and his Mercedes-Benz to Karen, and any proceeds from life insurance policies were to be distributed equally among Jeremiah's children.

Finally, the trust agreement established the governance of Jeremiah's company upon his death: (1) Anthony (Karen's brother and a defendant below) would enter the position of President and Lawrence Hillian—who is not one of Jeremiah's children—would remain Vice President of Operations; (2) three children—Karen, Sheree, and Anthony—would be the members of the governing board committee; and (3) if sold, 40% of the proceeds would go to Anthony with the remaining 60% divided equally among the other five defendants below (Karen, Albert, Sharon, Charlene, and Sheree). The trust agreement also empowered

Karen to "make distribution of assets of the Trust in money or in kind[]" and to "dispose of, exchange, or encumber any property, either real or personal[.]" Also on March 10, Karen assigned 100% of Jeremiah's company to the trust.

On March 11, 2014, Jeremiah died. The following day, Karen withdrew the entire $131,896.93 balance of the 0861 Account.

C. Litigation

1. Complaints and Discovery

Over a week after Jeremiah's death, on March 20, 2014, Donna and Nedra opened the Estate of Jeremiah Hillian, and they were certified as co-personal representatives on June 19, 2014. In their individual capacities and as co-personal representatives of the Estate, they, along with Michael and Belverly, filed a complaint the following day against the six children from their father's second marriage—those who would benefit most under the trust agreement. The complaint alleged five counts. In Count I, titled "Validity of Power of Attorney," the complaint alleged that the power of attorney prohibited Karen from granting gifts in excess of the federal tax exclusion and required that any gift be followed by a substantially similar concurrent gift to the remaining children. The allegations in this count did not actually challenge the validity of the Power of Attorney.[2] In Count II, "Review of Agent's Conduct under § 17-103 of the Estates and Trust Article," the complaint alleged that Karen's conduct as attorney-in-fact extremely prejudiced their interest in Jeremiah's estate. Count III, "Declaratory Judgment – Rights of Parties with

[2] The parties agreed that the power of attorney was valid.

Respect to the Revocable Trust Agreement for the Jerimiah [sic] Hillian Revocable Trust," asked the court to declare, *inter alia*, that Karen distributed Jeremiah's assets to herself and her five siblings pursuant to an unlawful trust agreement and that the trust be declared null and void. Count IV, "Declaratory Judgment – Right of Parties With Regard to the Insurance Policies," requested that the court declare that Karen wrongfully modified Jeremiah's insurance policies. And finally, Count V, "Accounting," claimed that there had been "inappropriate withdraws from the business funds [in] a series of transactions and amounts which constitute fraudulent attempts to defraud the Hillian Estate of some sums, monies and perhaps property held or that which should be held by the Estate," and requested that defendants account for all sums due to the Estate. The defendants answered on July 25, 2014, denying the claims.

After securing Jeremiah's bank records, the complaint was amended on April 17, 2015. This amended complaint added Arniece as a defendant and three more counts: "(6) Fraud and Deceit – SunTrust Account No. xxxxxxxxx0861; (7) Fraud and Deceit – SunTrust Account No. xxxxxxxxx8403; and (8) Civil Conspiracy". Count VI alleged that on March 22, 2013, Arniece fraudulently executed a bank signature card to add herself as an authorized signer on the 0861 Account, which allowed her to make unauthorized withdrawals. It also alleged that on May 17, 2013, Karen fraudulently executed a bank signature card to add herself as an authorized signer on the 0861 Account, forging Jeremiah's and Arniece's signatures and making unauthorized withdrawals. Count VII contained the same allegations as Count VI, but in regard to the 8403 Account; it also

alleged that Sheree fraudulently executed a bank signature card to add herself as an authorized signer and that she also made unauthorized withdrawals. Count VIII claimed there existed a civil conspiracy between Karen and Arniece, contending that they made a tacit agreement by adding their names as authorized signers to wrongfully remove over $131,000 that should belong to the Estate.

On June 3, 2015, a second amended complaint was filed. It maintained the eight counts iterated in the first amended complaint; however, it added SunTrust as a defendant and asserted two separate negligence counts against SunTrust: (1) failure to protect the 0861 Account against Arniece's and Karen's forgery and unauthorized access and Karen's withdrawal of $131,896.93; and (2) failure to protect the 8403 Account from Arniece's and Sheree's forgery and unauthorized withdrawals.

On June 10, 2015, the defendants—sans Arniece—submitted a general denial to the first amended complaint and contemporaneously submitted their answer to the second complaint, which, *inter alia*, denied the allegations against Karen for both "Fraud and Deceit" counts and the "Civil Conspiracy" count. SunTrust filed its answer on July 14, 2015, largely denying all allegations against it.[3]

[3] On June 1, 2015, plaintiffs moved for an order of default and for default judgment against Arniece, who, despite being served on April 27, 2015, had not filed an answer. That motion was later granted on July 10, 2015. On October 5, 2015, the court entered damages against Arniece totaling $137,296.

2. Motions for Summary Judgment

The parties proceeded through discovery. Then on November 30, 2015, SunTrust moved for summary judgment, arguing that Jeremiah failed to discover and report any issue with either the 8403 Account or the 0861 Account within the timeframe set by SunTrust's Rules and Regulations and that no one notified SunTrust about Karen's withdrawal within the 12 months after the statement was sent, as required by Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL") § 4-406(f). The plaintiffs opposed SunTrust's motion, arguing that whether Jeremiah added Arniece, Karen, and Sheree was disputed and further noting that Karen's withdrawal occurred after Jeremiah's death. Further, the Estate also asserted that it could not access the bank records. SunTrust replied that the first two arguments were irrelevant and that it never blocked the Estate from accessing records. On March 4, 2016, the court granted SunTrust's motion for summary judgment. The case proceeded against the remaining defendants.

On April 7, 2016, the Individual Plaintiffs moved for summary judgment on Counts II and III—those regarding the validity of the revocable trust agreement that Karen had signed on March 10, 2014. They contended, *inter alia*, that (1) Karen's power of attorney did not authorize her to create the revocable trust agreement because it would "substantially alter distribution of [Jeremiah's] estate during [his] lifetime or on [his] death[,]" in that several children would not receive their expected share; (2) Karen's power of attorney provided that, "If a gift is made to any one of my children, my Agent shall make a substantially similar concurrent gift to each of my other children[,]" and thus did not

authorize her to make the trust agreement as a gift; and (3) the trust agreement was procured by undue influence.

Timothy P. O'Brien, who filed a Notice of Substitution of Party reflecting his appointment by the Orphans' Court for Prince George's County as Successor Personal Representative of the Estate of Jeremiah Hillian on March 16, 2016, noted a response in support of the Individual Plaintiffs' motion. In that response, filed April 11, 2016, Mr. O'Brien contended that the court should declare the revocable trust agreement and the assignment of stock to the trust as null and void because Karen acted outside of her authority as power of attorney.

The six remaining defendants—Jeremiah's children—responded on April 11, 2016 (on the same day as the pre-trial hearing), arguing that the power of attorney authorized Karen's actions. Whether the trust agreement "substantially" altered the distribution of assets, they insisted, was a factual issue. They also maintained that Jeremiah was the sole lifetime beneficiary of the trust agreement and that no gifts occurred. According to the defendants, the trust was not the product of undue influence because "[t]he mere notion that a [power of attorney] is being used by the Attorney-in-Fact, doesn't rise to undue influence."

The court held a hearing on the motion for summary judgment on April 12, 2016. The Individual Plaintiffs argued that Karen violated the power of attorney because the trust agreement was an inter vivos transfer and the defendants did not rebut the presumption that an inter vivos transfer to a party in a confidential relationship is from undue influence. The

Estate added that the "substantiality" language contained in the power of attorney was controlling and whether the Individual Plaintiffs' shares of Jeremiah's assets dropping to zero constituted a substantial alteration of asset distribution, as contemplated in the power of attorney, was a question of law. The defendants' counsel responded that there was no undue influence, as Jeremiah had been consulting with the attorneys before his stroke and Karen continued that relationship. He claimed that the undue influence claim was a factual issue, as was whether there was "substantiality" of alteration to asset distribution.

The court denied the Individual Plaintiffs' motion for summary judgment, finding that there was an issue of material fact as to why the trust was created and whether the trust agreement substantially changed asset distribution. The case proceeded to trial.

3. Trial

The case was tried over two days before the Honorable John P. Davey. Christopher Martin testified first, explaining, as represented in the testimony quoted above, that he was approached by Karen to create a will for Jeremiah and a trust for the business. After meeting with Jeremiah, however, Mr. Martin did not feel comfortable drafting a will.

The plaintiffs intended to call a handwriting expert next. According to the expert's report, the signatures on the bank signature cards adding Arniece and Karen were not Jeremiah's signature. Because defense counsel stipulated that the bank cards were not signed by Jeremiah, the expert did not testify; however, his report was admitted into evidence. In pertinent part, the report stated:

> The Jeremiah Hillian signatures that appear on [the March 22, 2013 bank signature cards and the April 15, 2013 bank signature card] are not genuine

> signatures of Hillian. There is evidence to suggest that Arniece Hillian wrote the Jeremiah Hillian signatures on these three documents.
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> The Jeremiah Hillian signatures that appear on [the May 17, 2013 bank signature cards] are not genuine signatures of Hillian. There is evidence to support the opinion that Karen Hillian Carr probably wrote the Jeremiah Hillian signatures on these two documents.

Defense counsel conceded at trial that Karen signed Jeremiah's signature on the documents affecting the 8403 Account and the 0861 Account on May 17, 2013; and that Arniece signed Jeremiah's signature on the documents affecting the 8403 Account and the 0861 Account on March 22, 2013 and the 8403 Account on April 11, 2013. Defense counsel clarified, however, that there was no stipulation that the signatures were forged.[4]

Karen attempted to provide testimony, over multiple objections, explaining how she came to be Jeremiah's attorney-in-fact, including that it was his custom to randomly ask her to run errands with him and that he would ask her to sign documents. At a bench conference defense counsel proffered, as an example, a time when Jeremiah instructed Karen to write a check for him when firemen came by for a donation. The court stated that testimony as to why Jeremiah chose Karen was unnecessary.[5]

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[4] The defense theory, as reflected in the question presented on appeal, was that Karen signed Jeremiah's name at his request and in his presence and that the signatures were, therefore, authorized. So, although the parties agreed to stipulate to the fact that the relevant signatures were signed by Karen and Arniece and not Jeremiah, the defense would not stipulate that the signatures were a forgery and the plaintiffs would not stipulate that the signatures were authorized.

[5] The following exchange also occurred:

> [THE COURT]: Let's be serious. If dad is sitting there, why isn't dad signing his own papers?

Karen admitted that she spoke about the trust agreement with her five other siblings who would benefit financially but that she had not discussed the matter with the Individual Plaintiffs. She also stated that she believed the trust agreement awarded an equitable, but not equal, division of Jeremiah's assets, despite the proceeds of Jeremiah's house and the business going to only the six defendants. Defense counsel had difficulty, however, identifying for the court what specific property would go to the Individual Plaintiffs.

At the close of trial on April 13, 2016, and following the testimony of Carolyn Mathis from SunTrust Bank set out above, the court reserved on the decision. On September 8, 2016, the court issued its opinion and order. In regard to the 8403 Account, Judge Davey found that,

> On May 17, 2013, Acct. #8403 was changed to add Defendant Karen Hillian-Carr as an authorized sign[e]r (PL.'s Ex. No. 9). To effectuate this change, the SunTrust Personal Account Signature Card required certification via Jeremiah Hillian's signature on two signature blocks. This Court finds that the signatures of Jeremiah Hillian on the Signature Card's blocks were forged.

The court made the same finding as to the subsequent change to the 8403 Account's bank signature card to add Sheree on April 15, 2013 and to add Arniece as an authorized signer on March 22, 2013. Likewise, the court made similar findings regarding changes made on May 17, 2013 to the 0861 Account to add Karen as an authorized signer and to add Karen and Arniece as account owners. The court confirmed that, on March 12, 2014, Karen

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> [MR. REID]: Because he didn't sign his own papers, because he told his daughters to do it routinely[.]

withdrew the 0861 Account's balance in the amount of $131,896.93.

As to the revocable trust agreement, the court observed that Jeremiah never recovered from his stroke on November 5, 2013. The court determined that Jeremiah was unconscious and on life support when Karen executed the trust agreement and noted that he was neither present at its signing nor had he read it prior to his death on March 11, 2014. The court also determined that, under Karen's Power of Attorney, "all of Jeremiah Hillian's children should have received equal distribution."

Following the foregoing determinations, the court decided that except for the 8403 Account (which was payable on death to Sheree), Jeremiah's assets were subject to intestacy since "[a]bsent a valid instrument indicating otherwise, Maryland intestacy law requires Jeremiah Hillian's assets remain in his estate to ultimately be distributed equally among his children." The court also decided that Karen did not have "the authority to execute the Revocable Trust Agreement[]" because she could not, pursuant to her authority under her Power of Attorney, "'substantially alter distribution of [Jeremiah's] estate[.]'" As to the 0861 Account, the court concluded that Karen engaged in fraud and deceit, determining that she

> made an intentional misrepresentation with the intention of defrauding the Plaintiffs by forging Jeremiah Hillian's name on signature cards and withdrawing the full balance of the account on the day following [Jeremiah's] death in order to hide the funds from the Estate and distribute them to fewer than all of his heirs. Through their reliance on [Karen's] actions, Plaintiffs and the Estate suffered damages because the fraudulent withdrawal deprived them of their rightful distribution of funds.

The circuit court entered judgment declaring the Estate the sole owner of the residential real property and funds in the amount of $131,896.93 and as follows:

> **ORDERED**, that the Revocable Trust Agreement for the Jeremiah Hillian Revocable Trust dated March 10, 2014, executed by Karen Hillian-Carr as attorney-in-fact for Jeremiah Hillian and Karen Hillian-Carr as Trustee, be, and hereby, is **VOID *AB INITIO*** and of no legal effect; and it is further,
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> **ORDERED**, that the Assignment of Interest in Hillian Brothers & Sons, Inc., dated March 10, 2014, executed by Karen Hillian-Carr as attorney-in-fact for Jeremiah Hillian, Assignor, and Karen Hillian-Carr, as Trustee of the Jeremiah Hillian Revocable Trust, be, and hereby is **VOID *AB INITIO*** and of no legal effect; and it is further,
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> **ORDERED**, that the Estate of Jeremiah Hillian, . . . be, and hereby is, declared the sole owner of Hillian Brothers & Sons, Inc., the residential real property located [in] Bowie, Maryland 20721, and the commercial real property located [in] Landover, Maryland 20785; and it is further,
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> **ORDERED**, that the Estate of Jeremiah Hillian, . . . be, and hereby is, declared the sole owner of the funds in the amount of One Hundred Thirty-One Thousand Eight Hundred Ninety-Six and 93/100 Dollars ($131,896.93) held in SunTrust account number ending 0861 as of March 11, 2016; and it is further,
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> **ORDERED**, that judgment be, and hereby is, entered against Karen Hillian-Carr and in favor of the Estate of Jeremiah Hillian, . . . in the amount of One Hundred Thirty-One Thousand Eight Hundred Ninety-Six 93/100 Dollars ($131,896.93); and it is further,
>
> **ORDERED**, that Defendants Hillian-Carr, as attorney-in-fact to Jeremiah Hillian, and Defendant Anthony Hillian, as President, provide the Estate of Jeremiah Hillian, within 120 days of this Order, detailed records of every financial transaction of Hillian Bros. & Sons, Inc. and all withdrawals from the business account thereof made under the 2010 Power of Attorney from July 1, 2013 to the date of this Order; and it is further,
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> **ORDERED,** that Defendants fully and completely account, within 120 days of this Order, for all those sums not previously disclosed that are due to the

Estate as loans, bonuses, wages, and sums held in trust or on deposit on behalf of Jeremiah Hillian; and it is further,

ORDERED, that this case be closed statistically.

DISCUSSION

I.

FORGERY AND AUTHORIZATION

Karen's contention on appeal is that there was no forgery or fraud because Jeremiah authorized her and Arniece to sign his name on the signature cards for the 0861 and 8403 Accounts and, consequently, her withdrawal of the funds from the 0861 Account was authorized as a joint account holder. Karen argues that Maryland has recognized that, in cases involving negotiable instruments and deeds, an alleged forgery of a signature is valid when authorized or adopted by the individual. She cites to CL §§ 1-201(41), 3-402, 3-403 and several cases construing that Article to support her supposition that the signatures were neither forged nor unauthorized because Jeremiah was present when either she or Arniece signed his signature while adding theirs. Karen maintains that she met her burden of proving that the signatures were authorized. As a result, she avers that the circuit court "erred as a matter of law when it concluded . . . that Jeremiah's signature was a 'forgery,' rather than an 'authorized signature[,]'" which would grant her the legal right to withdraw the 0861 Account's balance. She continues that because "there was no evidence the [sic] Jeremiah did not authorize his signature on the signature card, the trial court could not possibly rule the opposite as a matter of law."

The Estate disagrees and notes that Karen's reliance on commercial law statutes and

cases is misplaced because they govern negotiable instruments whereas a bank signature card is not a negotiable instrument. Rather, the purpose of a bank signature card is to help prevent fraud. It also contends that the circuit court had sufficient evidence, including that of Karen's actions to obtain control of the funds in the SunTrust account, to reach its factual finding—and not a legal conclusion—that Jeremiah's signatures were forged and unauthorized. The Estate argues that Karen incorrectly predicated her argument on her "erroneous belief that the circuit court did not appreciate or understand the difference between an authorized signature at another's direction and a forgery[]" because the court rejected that argument. The Estate avers that the circuit court was correct not to credit Carolyn Mathis' testimony because of several credibility issues and that it is in the factfinder's purview to determine the weight afforded to a witness's testimony. Alternatively, the Estate argues that once it was established that Jeremiah did not sign the bank signature cards, Karen had the burden to prove the validity of the signatures and that she failed to demonstrate authorization. Finally, the Estate contends that even if Karen was a signatory on the accounts, the power of attorney did not grant her the ability to gift money solely to herself.

In their brief, Donna, Nedra, and Belverly (collectively, "Individual Appellees")[6] agree with the Estate's argument that the circuit court's finding of forgery is a question of fact, not law. Further, they allege that there was ample evidence to support the circuit court's findings, including that Carolyn Mathis' testimony was inconsistent and

[6] Michael Glenn, the other individual plaintiff, has not taken part in this appeal.

circumstantial, that Jeremiah's call did not include specific details about his plans, and that the handwriting expert's report, admitted into evidence, concluded that Karen signed Jeremiah's name on the bank cards. Because the circuit court found that Karen forged the signatures, the Individual Appellees claim that there is no basis to assess whether Jeremiah's signature was authorized. Alternatively, however, the Individual Appellees argue that whether Jeremiah authorized the signatures is a question of contract law—because the signature card is not a negotiable instrument—and there is no indication that Jeremiah ever ratified his signature.

A. Applicability of the Commercial Law Article

As an initial matter, we hold that Karen incorrectly relies on Section 3 of the Commercial Law Article, governing negotiable instruments and cases interpreting the same. Pursuant to that Article, a negotiable instrument is:

> (a) . . . [A]n unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
>
> (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
>
> (2) Is payable on demand or at a definite time; and
>
> (3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

CL § 3-104(a).

A bank signature card is not a negotiable instrument. Black's Law Dictionary defines a "signature card" as "[a] financial-institution record consisting of a customer's

signature and other information that assists the institution in monitoring financial transactions, as by comparing the signature on the record with signatures on checks, withdrawal slips, and other documents." *Signature Card,* Black's Law Dictionary (10th ed. 2014). A bank signature card would not fit within the definition of a negotiable instrument, as the execution of a bank signature card does not carry with it the promise to pay any amount of money at any point in time. *See* CL § 3-104(a).

Given this, the cases construing the Commercial Law Article on which Karen relies are of little persuasive value. She first cites *Rezapolvi v. First National Bank of Maryland*, 296 Md. 1 (1983), for the proposition that a signature on a check can become authorized via ratification "by one with the power to sign[.]" 296 Md. at 13. In that case, an employee of Columbia Marketing signed a check but was not authorized. *Id.* at 3. The bank exchanged it for a cashier's check without determining if the signature was authorized, and the authorized signer later had the bank stop payment but stated, "I had someone else sign the check . . . I did intend to . . . give you new signature cards with this new person's signature." *Id.* at 4-5 (emphasis omitted). After the payee sued the bank for dishonoring the cashier's check, the bank alleged that the signature on Columbia Marketing's check was unauthorized. *Id.* at 5. The circuit court found in favor of the bank; however, the Court of Appeals ruled that the signature was not unauthorized because the authorized signer "expressly authorized" and "*directed* the employee to sign the check." *Id.* at 5, 12-13 (emphasis in original).

Karen also cites *Citizens Bank of Maryland v. Maryland Industrial Finishing Co.,*

Inc., 338 Md. 448 (1995). There, an employee was authorized to deposit checks payable to her employer and was required to stamp those checks as "for deposit only" with the company's stamp when indorsing checks. *Id.* at 454-55. The employee embezzled by depositing checks in her own account at Citizens Bank and did not include the "for deposit only" indorsement. *Id.* She testified that the bank never questioned checks lacking that indorsement. *Id.* at 457. The company sued the bank, and the circuit court granted the bank's motion for judgment based upon its finding that the indorsements "were actually authorized, and were therefore not forgeries." *Id.* This Court held that the indorsements were unauthorized because the employee was not authorized to deposit those checks into her personal account. *Id.* at 458. The Court of Appeals agreed that her deposits were unauthorized, but more importantly, the Court ruled that she did not have the authority to indorse the checks the way she did—by failing to include the restrictive indorsement of "for deposit only". *Id.* at 460, 463-65.

Finally, Karen cites *Fisher v. McGuire*, 282 Md. 507 (1978). In that case, the decedent conveyed a one-half interest in her property to her nephew, resulting in a joint tenancy. 282 Md. at 508-09. The decedent's other relatives later found out about the conveyance, which caused a rift between the decedent and her nephew. *Id.* at 509. A deed purportedly executed by the decedent conveyed her interest to other family members. *Id.* The decedent's signature was not her handwriting; however, a notary who went to the decedent's house stated that the decedent presented her with the deed and requested that she notarize it. *Id.* at 510-11. The circuit court concluded that the decedent adopted the

writing as her own, and the Court of Appeals agreed, ruling that the deed was valid because the decedent had recognized and adopted the writing. *Id.* at 512.

The foregoing cases do not support the outcome that Karen urges in the present appeal. *Rezapolvi* and *Citizens Bank* are inapposite because they both involved checks, upon which a party relied for the payment of money. Checks represent the promise to pay, and the exchange to the payee indicates this promise. Similarly, the deed in *Fisher* likewise involves the acknowledgement of a transfer, albeit for a property interest. Unlike checks and deeds, a bank signature card carries no such underlying understanding to exchange something of value. There is nothing inherent in a bank signature card that allows a separate party to rely upon them for the transfer of money or property. Instead, the signature card simply provides the bank with a customer's signature to compare and verify other documents bearing the customer's signature, including negotiable instruments under CL § 3-104(a). Indeed, as the Estate posits, a bank signature card is used to prevent fraud, and it would be illogical to accept an argument that anything other than an original signature is permissible without the appropriate designation next to the signature.

B. Circuit Court's Finding

Forgery is "[t]he act of fraudulently making a false document or altering a real one to be used as if genuine[.]" *Forgery*, Black's Law Dictionary (10th ed. 2014). The determination of whether a document is a forgery is a question of fact. *See Starke v. Starke*, 134 Md. App. 663, 674-76 (2000) (explaining that a trial court's finding that a signature was "not false or forged or copied" was a finding of fact); *see also Harmon v. State Roads*

Comm'n, 242 Md. 24, 33 (1966) (holding that the trial court's findings of fact regarding the validity of two signatures were not clearly erroneous).

A factfinder considering facts that may serve as the predicate for a fraud has an "unfettered prerogative" to determine "the ultimate weight to be given to the evidence . . . provided only that there be some confident evidence as to each required element which, if believed, would be capable of establishing that element." *Thrifty Diversified, Inc. v. Searles*, 48 Md. App. 605, 611 (1981). We review these findings of fact for clear error, Md. Rule 8-131(c), giving due deference to the fact-finder's assessment of a witness's credibility. *Grimm v. State*, 447 Md. 482, 505-06 (2016). Our task on appeal is to simply determine whether there was legally sufficient evidence presented at trial to support the trial court's conclusion that Jeremiah's signatures were forged and, thus, Karen was unauthorized to withdraw the 0861 Account's balance. *See Starke*, 134 Md. App. at 676-77; *Searles*, 48 Md. App. at 610-11.

Here, the circuit court had more than sufficient evidence that Jeremiah's signatures on the signature cards were forged. Importantly, the parties stipulated to the handwriting expert's report, which deduced that the signatures were not signed by Jeremiah, but by Arniece and Karen. Relevant for the purposes of this appeal, the report stated:

> The Jeremiah Hillian signatures that appear on [the May 17, 2013 bank signature cards] are not genuine signatures of Hillian. **There is evidence to support the opinion that Karen Hillian Carr probably wrote the Jeremiah Hillian signatures on these two documents.**

(Emphasis added). Although defense counsel at trial clarified that there was no stipulation as to forgery, the handwriting expert's report undoubtedly supported the circuit court's

conclusion that signatures were, indeed, forged because Arniece and Karen did not disclose that they were signing Jeremiah's name as agents or pursuant to a power of attorney.

Mr. Martin's testimony also supported the circuit court's determination. He testified that Karen wanted "to create a will for [Jeremiah] and potentially a trust for the business." When Mr. Martin visited Jeremiah in his home to determine whether Jeremiah was capable of creating a will, he became convinced that he could not "rely on [Jeremiah's] words . . . because I couldn't understand him clearly at that point[.]" Mr. Martin did not discuss the disposition of assets with Jeremiah because after that meeting, he felt that he would "rely too heavily upon interpretation from the children[,]" and "the child[] that [he was] working with was [Karen] at that time." Mr. Martin's testimony coalesces with testimony from Donna and statements from Belverly and Nedra. Donna testified that she was unaware that Karen spoke with an attorney after Jeremiah's stroke and that she did not learn about Karen's execution of the trust agreement until ten days after Jeremiah's death. Belverly and Nedra likewise learned of the trust agreement only after Jeremiah's passing.

Karen relies heavily on the testimony of former SunTrust employee Carolyn Mathis to support her argument that Jeremiah authorized her actions. The trial court, however, found Ms. Mathis' testimony to be inconsistent. Ms. Mathis first testified that Arniece and Jeremiah signed the card for the 8403 Account; however, this testimony contradicts the handwriting expert's report that Arniece signed. When asked who *specifically* signed, Carolyn Mathis replied, "Arniece and Jeremiah were there to sign the signature card." Similarly, when asked who signed the signature card on May 17, 2013, Ms. Mathis

responded, "All parties were there when the document was signed." In response to whether it was Jeremiah's signature, she stated, "It appears to be[,]" but later said that "[i]t was signed for him." The court remarked, "I have got it answered twice with two different answers . . . three strikes and you are out." At that point, Ms. Mathis admitted that "[h]is niece" signed. Given the deference we afford the factfinder's ability to view and assess live testimony, *see Grimm*, 447 Md. at 505-06, we cannot say that the court erred in the weight it afforded Ms. Mathis' testimony.[7]

After hearing all the evidence, the circuit court made the factual determination as to each Account "that [the] signatures of Jeremiah Hillian on the Signature Card's blocks were forged." We hold that there was sufficient evidence in the record to support the court's assessment, and we cannot say that the finding was clearly erroneous. We therefore affirm the circuit court's determination that Jeremiah's signatures were forged and that Karen's withdrawal of funds from the 0861 Account was unauthorized.[8]

[7] The trial court was equally unconvinced by Karen's testimony. At a bench conference, the court observed, "Let's be serious. If dad is sitting there, why isn't dad signing his own papers?"

[8] We also note that, in addition to finding that Karen forged the signature cards, the trial court concluded that Karen's power of attorney did not authorize her to substantially alter distribution of Jeremiah's estate, which, it found, she did by defrauding the plaintiffs and withdrawing the full balance of the 0861 Account.

The power of attorney created a principal-agent relationship between Jeremiah and Karen. *Figgins v. Cochrane*, 403 Md. 392, 415 (2008). When a plaintiff adduces sufficient evidence to demonstrate that a relationship of trust existed, "the burden shifts to the defendant to show the fairness and reasonableness of the transaction[.]" *Sanders v. Sanders*, 261 Md. 268, 276 (1971) (citations omitted). This burden-shifting relieves the plaintiff "from the necessity of proving 'the actual exercise of overweening influence, misrepresentation, importunity, or fraud,'" and places on the defendant the burden of showing "'that the transfer of the property was the deliberate and voluntary act of the

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grantor and that the transaction was fair, proper and reasonable under the circumstances[.]'" *Id.* at 276-77 (citations omitted). As the Court of Appeals stated in *Gerson v. Gerson*, it is unnecessary to "consider[] the questions of actual fraud and forgery" when a confidential and fiduciary relationship exists and the defendant fails to meet his or her "burden of proving the fairness and justice of the entire transaction." 179 Md. 171, 180 (1941).

The evidence here shows that Karen withdrew the entire $131,896.93 balance from the 0861 Account the day after Jeremiah's death and failed to make a "substantially similar" gift to all of Jeremiah's children as the power of attorney required her to do if she gifted his assets. Karen failed to meet her burden of showing the fairness and propriety of this transaction. Consequently, even without the finding of forgery, we see no error in the trial court's conclusion that Karen defrauded the plaintiffs.